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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,859	01/06/2004	James J. Bartel	7663-000003/COD	4846

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,859

Applicant(s)

BARTEL, JAMES J.

Examiner

Frank Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-29 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14, 20, 21 and 23-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12, 15-19, 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Status of Application

1. Applicant's amendment, filed March 2, 2005, has been entered in the application. Claims 9-29 are pending, claims 13, 14, 20, 21, and 23-29 remain withdrawn from consideration.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 9, 10, 12, 15, 16, 17, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mullican et al. (US 5,887,880, cited by applicant) in view of Vin (US 4,039,037, cited by applicant). Mullican et al. teach a powered vehicle having a frame assembly which extends from front to rear of the vehicle including an upward slope (figure 2), at least first and second pairs of rails which are connected to vehicle wheels (24), the wheels supported on a low profile suspension which includes plural trailing arms (51), a pair of first and second transverse members (50) which form part of a torsion box, a pair of air springs (46) interspersed between the torsion box (at 50) and the frame (proximate 48), which can urge the frame upward with respect to the suspension (compare figures 5, 6); the wheels (24) supported on an upwardly extending support (42). The reference to Mullican et al. fails to teach the wheels as being driven by an engine supported on the frame, including a transfer device with axially offset power input and output elements, the drive accomplished by a drive axle which is substantially horizontal. Vin teaches a vehicle drive including an engine (1) connected to a transmission (2) where an output (3) is connected to a geared drive transfer (6, 7) including a differential device, and having an input element, connected with a single segment drive shaft (5) between output (3) and the differential device and wherein an output element (8) which input and output elements are vertically axially offset, and wherein the wheel drive is accomplished by a substantially horizontal single segment drive shaft (10) extending to a driven wheel (e.g., 17) through a step up gearing arrangement (14, 15). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the drive scheme taught by Vin to the vehicle wheels

Art Unit: 3618

of the vehicle of Mullican et al. for the purpose of providing a greater drive force, in that the drive scheme of Vin is adapted to drive plural sets of rear wheels.

4. Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mullican et al. in view of Vin and Schwenk (US 3,951,225, cited by applicant). The reference to Mullican et al. as modified by Vin is discussed above and fails to teach the provision of the differential being a half-shaft differential mounted to the vehicle frame, and having opposing swing axles extending therefrom. Schwenk teaches a vehicle drive scheme adaptable to vertically movable drive wheels (12) including a differential (34) taught to be directly mounted to the vehicle frame, and having a pair of swing axles (35, 36) extending therefrom for driving separate wheels. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a single drive axle system as taught by Schwenk, in place of the drive axle scheme taught by the modifying reference to Vin, using a differential and a pair of swing axles instead, for the purpose of reducing the number of moving parts between the front and rear of the vehicle.

Response to Comments

5. Applicant has argued that claims 13, 14, 20, 21, and 23-29 have been improperly withdrawn from consideration. The examiner does not agree, for the following reasons. The non-illustrated elements are treated in order of the citation in the previous office action:

(a) First and second plates attached to the transverse cross beams.

Applicant appears to argue that (a) is shown as plate elements 72, which support the gear boxes 68. The claim recitation calls for these plates to be attached to the transverse cross beams (shown as 78a, 78b), however a perusal of figures 17 and 18 shows plates 72 to be connected to the respective trailing arms (74), which position appears to be supported by a perusal of figure 19, which clearly illustrates at least that the plates 72 are not attached to transverse cross member 78a.

(b) Further first and second cross beams connected to the transverse beams adjacent the first and second plates.

Art Unit: 3618

(b, cont'd) Applicant has not provided any evidence to support the notion that this feature is shown or supported.

(c) Provision of a single segment drive shaft running perpendicular to horizontal.

Applicant has alleged this feature is shown in the comments at page 11 on lines 9-12 and lines 18-21. The examiner, however, sees no evidence of a single segment drive shaft that is perpendicular to horizontal. Applicant is reminded that the definition of 'perpendicular' is, in general, standing at a right angle to a plane or line. Inasmuch as 'horizontal' is understood to represent a horizontal plane, the examiner sees no evidence of a drive shaft perpendicular to such a plane, except, possibly if the claimed vehicle has been stood on its front or rear longitudinal end. Applicant is most welcome to point out the perpendicular drive shaft, for example, by reference to a specific portion of the drive shaft which is clearly illustrated as being perpendicular to horizontal. Applicant has not provided any explicit definition of 'horizontal' beyond that which is commonly known.

As noted in the previous office action, no drawings in the instant application show these features, nor are these features supported by the parent application of which this instant application is a divisional.

Definition of a Divisional Application: A later application for a distinct or independent invention, carved out of a pending application **and disclosing and claiming only subject matter disclosed in an earlier or parent application** is known as a divisional application or "division." The divisional application should set forth the portion of the earlier disclosure that is germane to the invention as claimed in the divisional application.

6. As regards the rejections set forth under 35 USC §103, applicant has commented queried why the reference to Mullican has been used as a primary reference. Initially, the examiner notes that neither Mullican nor Vin teach each and every limitation of the independent claims, however Mullican does teach a vehicle - the most generic portion of applicant's claim recitations, whilst Vin teaches a drive train for a vehicle, but not a whole vehicle. As regards Vin's single segment drive shaft, it appears

Art Unit: 3618

as though applicant may be arguing limitations which are not actually set forth in the claims to the breadth they are being argued. Vin does teach a vehicle drive where an output (3) is connected to a geared drive transfer (6, 7) including a differential device, wherein the connection between the output (3) and the geared drive transfer having the differential device is made with a single segment drive shaft (5), which can be verified by reference to Vin's figure 2. To the breadth that such a limitation is actually recited in the claims it is deemed met by the reference to Vin. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is not proper for an examiner to read unclaimed limitations into the claims

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)

Applicant has argued that each of the references to Vin and Mullican include deficiencies, however In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Art Unit: 3618

Conclusion

7. Applicant is reminded that claims 13, 14, 20, 21, and 23-29 are withdrawn from consideration as not being directed to the elected embodiment.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326
After Final Amendments: 703-872-9327
Customer Service Communications: 703-872-9325

F. VANAMAN
Primary Examiner
Art Unit 3618



5/12/05